

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0413-01E</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Managed Risk Medical Insurance Board			AGENCY FILE NUMBER (if any) ER-5-09

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) AIM Enrollment Limitations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 10		AMEND 2699.202	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100 )			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Dianne Knox		TELEPHONE NUMBER (916) 324-0592	FAX NUMBER (Optional) (916) 445-0898
		E-MAIL ADDRESS (Optional) dknox@mrmib.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Randi Turner</i>	DATE 4/13/10
TYPED NAME AND TITLE OF SIGNATORY Randi Turner, Chief, Human Resources and Program Services	

For use by Office of Administrative Law (OAL) only

STATE OF CALIFORNIA  
MANAGED RISK MEDICAL INSURANCE BOARD  
1000 G STREET, SUITE 450  
SACRAMENTO, CA 95814

TITLE 10. INVESTMENT  
CHAPTER 5.6. ACCESS FOR INFANTS AND MOTHERS PROGRAM  
AMEND SECTION 2699.202

Test proposed to be added is displayed in underline type.  
Text proposed to be deleted is displayed in ~~strikeout type~~.

ARTICLE 2. ELIGIBILITY, APPLICATION, AND ENROLLMENT

**2699.202. Board Determinations of Program Funding and Initial Review of Applications.**

~~Upon receipt of an application the program shall determine if there is funding available for additional enrollment in the program.~~

~~(a) If there is no funding available the application shall be rejected and returned. If the Board makes a finding that sufficient funds are not available to cover the estimated costs of program expenditures and that it is necessary to limit enrollment in the program to ensure that expenditures do not exceed amounts available for the program, the program shall be closed to new enrollment.~~

~~(b) (1) If the Executive Director determines that, in addition to sufficient funds for all eligible subscribers, sufficient funds are available to cover the estimated cost of program expenditures for some new eligible applicants, the program shall be open to new enrollment for the number of eligible applicants for whom the Executive Director determines there are sufficient funds available.~~

~~(2) If the Executive Director determines that sufficient funds are available to cover the estimated costs of program expenditures, the program shall be open to new enrollment.~~

~~(c) If the Board has made a finding pursuant to subsection (a) that sufficient funds are not available, all applications shall be denied due to insufficient funds, unless the program is open to new enrollment for some or all applicants pursuant to subsection (b).~~

(b)(d) If, and to the extent that, there is funding available the program is open to new enrollment, the application shall be reviewed for completeness.

- (1) If it is not complete a telephone call will be placed to the applicant to request the missing information and documentation. If the applicant is reached, the applicant will be asked to provide the necessary information and documentation. If the applicant is not reached by telephone, a letter will be mailed to the applicant indicating the required information and/or documentation needed to complete the application. The applicant must provide all information and/or documentation necessary for the application to be completed within 17 calendar days from the date the application was received by the program and prior to the 30th week of gestation, and the applicant will be so notified.
- (2) If the application submitted is not complete and it is not completed within seventeen (17) calendar days and prior to the 30th week of gestation, the application shall be denied. The applicant shall be sent a notice indicating that their application is denied on the basis that the program could not make an eligibility determination because of missing information or documentation.
- (3) If it is complete it will be reviewed for an eligibility determination pursuant to Section 2699.203.

Authority cited: Section 12696.05, Insurance Code. Reference: Sections 12696, 12696.05 and 12696.15, Insurance Code.

## **FINDING OF EMERGENCY**

### **ACCESS FOR INFANTS AND MOTHERS ENROLLMENT LIMITATION RELATING TO INSUFFICIENT FUNDS ER-5-09**

At its November 18, 2009 meeting, the Managed Risk Medical Insurance Board (MRMIB) adopted emergency regulations clarifying and improving the process through which MRMIB will limit enrollment in the Access for Infants and Mothers program (AIM) when there are insufficient program funds, as required by statute.

MRMIB has statutory authority to adopt these emergency regulations; the AIM statute gives MRMIB deemed emergency regulation authority for regulations "that manage program integrity," and this regulation, by virtue of its subject matter, meets that standard. In addition, at its November 18, 2009 meeting, the MRMIB Board made a factual finding that an emergency exists and that the immediate adoption of the enclosed regulations is necessary to avoid serious harm to the public peace, health, safety, or general welfare. A copy of the Finding of Emergency adopted by the Board is attached. MRMIB also notes that a clerical correction was made to the proposed regulations. The first sentence in Section 2699.202 (a) was moved to 2699.202 (c) when it presented to the Board on November 18, 2009. MRMIB has placed this sentence back into Section 2699.202 (a) for clarity.

AIM is a state- and federally-funded program administered by MRMIB. AIM provides comprehensive health insurance to lower-income women during pregnancy and for sixty days thereafter. (Insurance Code sections 12695 *et seq.*)

### **SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION**

#### **Statutory Authority to Adopt Emergency Regulations**

The Board has statutory authority to adopt these regulations on an emergency basis without a specific factual showing of emergency. The AIM statute gives the Board authority to adopt emergency regulations managing program integrity. The relevant provision of the AIM statute (Insurance Code section 12696.05(h)) states as follows:

12696.05. The board may do all of the following:

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(h) Issue rules and regulations as necessary to administer the program. *All rules and regulations issued pursuant to this subdivision that manage program integrity*, revise the benefit package, or reduce the eligibility criteria below 300 percent of the federal poverty level *may be adopted as emergency regulations* in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). *The adoption of these regulations shall be deemed an emergency* and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(Emphasis added.)

The proposed regulations, by virtue of their subject matter, are “regulations...that manage program integrity” within the meaning of the statute, because they directly address and fulfill MRMIB’s statutory obligation to maintain the AIM program’s fiscal integrity.

Insurance Code section 12696.15 requires that MRMIB “shall administer the program in a manner that ensures that program expenditures do not exceed amounts available in the [Perinatal Insurance] fund.” (See also Insurance Code section 12695.14 and 12699 for definition and operative provisions concerning the Perinatal Insurance Fund.) The proposed regulations contain amendments to the existing process under which MRMIB closes AIM to new enrollment when necessary to manage enrollment within available funding in fulfillment of this statutory duty. Thus, the subject matter of the regulations is indeed the management of program integrity.<sup>1</sup>

### **Current AIM Fiscal Status/Statutory Obligation to Maintain Fiscal Integrity**

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<sup>1</sup> In light of MRMIB’s deemed statutory authority to adopt emergency regulations managing program integrity, the MRMIB Board was not obligated to make emergency findings. However, as stated in the introductory paragraph, the MRMIB Board did make a finding of emergency (attached) at its November 18, 2009, meeting. In the context of the deepening statewide budget crisis and substantial uncertainties about AIM program funding, which are described below, there is a substantial current risk that MRMIB will be obligated to close the AIM program to new enrollment. Therefore, it is essential that the program have in place clear, current and enforceable regulations that are consistent with the way MRMIB administers the program today and that give the public adequate notice of the applicable rules in the event that MRMIB is obligated to close AIM to new enrollment. Thus, an emergency exists within the meaning of Government Code section 11342.545 and the adoption of the proposed regulations would avoid serious harm to the public peace, health, safety, or general welfare.

As stated above, the AIM statute requires that MRMIB “shall administer the program in a manner that ensures that program expenditures do not exceed amounts available in the [Perinatal Insurance] fund.” Thus, AIM is not an entitlement program, i.e., a program in which all eligible applicants are entitled to enrollment; to the contrary, the quoted language confers a statutory obligation to maintain the program’s fiscal integrity by limiting enrollment to the extent necessary to manage within available funds. In light of the state’s dire fiscal situation, it is foreseeable that MRMIB could be required to close the AIM program to new enrollment during the current fiscal year or the Budget Year (2010-11).<sup>2</sup>

In addition to the statewide budget crisis, which raises an ongoing question of available funds for *all* non-entitlement programs, the available information on the current AIM appropriation and costs indicates a significant risk that, either in the current fiscal year or in the Budget Year, funding for the AIM program will be insufficient to cover all eligible women.

MRMIB has monitored the AIM budget throughout the current calendar year. Earlier in the current fiscal year, MRMIB concluded that the program would have insufficient funds to enroll new subscribers beginning in January, 2010. Based on updated information, MRMIB later revised its fiscal projections; MRMIB now *tentatively* concludes that sufficient funding is likely to be available for the current fiscal year. However, this revised estimate is based *solely* on the reality that fewer women than expected are enrolling in the program; this may be because of financial downturns within the AIM target population that make it more difficult for many lower-income women to afford the program premiums (one and one-half percent of income). Furthermore, state funding for AIM comes from the Proposition 99 Cigarette and Tobacco Products Surtax, which is apportioned among a number of state programs and in recent years has been a shrinking revenue source.

Therefore, while MRMIB will not be obligated to close AIM enrollment in January, 2010 as previously expected, there continues to be a substantial risk that MRMIB will be obligated to close AIM enrollment because of insufficient funds. Depending on the enrollment trend in AIM, the AIM appropriation in Governor’s proposed 2010-11 Budget (released in January) and the Legislature’s action on the proposed budget, MRMIB could be required to limit AIM enrollment even before the end of this fiscal year.

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<sup>2</sup> In November 2009, a new report by the Legislative Analyst (November 2009) estimated that California officials will face an additional budget gap of nearly \$21 billion over the next year and a half. (The 2010-11 Budget: California’s Fiscal Outlook”; available at “[http://www.lao.ca.gov/2009/bud/fiscal\\_outlook/fiscal\\_outlook\\_111809.pdf](http://www.lao.ca.gov/2009/bud/fiscal_outlook/fiscal_outlook_111809.pdf)”

In order to ensure that MRMIB complies with its statutory duty to maintain the fiscal integrity of the AIM program, it is essential that the regulations in effect if and when MRMIB closes the program to new enrollment are clear and enforceable. The regulations must be consistent with current program operations and must give the public adequate notice of the applicable rules.

### **AUTHORITY AND REFERENCE CITATIONS**

Authority: Section 12696.05 (h), Insurance Code.

Reference: Sections 12696, 12696.05 and 12696, Insurance Code.

### **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

Existing Law: Insurance Code section 12696.15 requires that MRMIB “administer the [AIM] program in a manner that ensures that program expenditures do not exceed amounts available in the [Perinatal Insurance] fund.” Current AIM regulations comply with this requirement by specifying the process through which the program will close to new enrollment when there are insufficient funds. The proposed regulations modify the current regulations to implement standards that are more clear and specific; place additional public accountability on the board; and conform to actual program operations.

A summary of the proposed regulations’ effect on existing law and regulations is as follows:

Section 2699.202 (Heading): The heading of Section 2699.202 is amended to reflect that the section addresses Board determinations concerning funding as well as initial review of applications.

Section 2699.202 (Introductory Language): The proposed regulation deletes the sentence stating that, upon receipt of an application, the program shall determine whether there is sufficient funding available for new enrollment. Instead, the process described in the subsequent subsections of the proposed regulation clarifies that the MRMIB Board itself, not staff, makes the necessary findings of insufficient funding. Under this construct, absent a Board finding, the program is not closed to new enrollment.

Section 2699.202(a): The proposed regulation deletes the sentence stating that if there is no funding available, an application is rejected and returned. As

delineated in the subsequent sections, a finding of insufficient funds will not happen each time an application is received; furthermore, if an application is rejected for insufficient funds (as described in new subsection (c)), the program will not physically return the application. In addition, the new language in subsection (a) provides that the program shall be closed to new enrollment if the MRMIB Board makes a finding that sufficient funds are not available to cover the estimated costs of program expenditures and that it is necessary to limit enrollment in the program to ensure that expenditures do not exceed amounts available for the program.

Section 2699.202(b): Section 2699.202(b) specifies that, if the program has been closed to new enrollment, the MRMIB Executive Director shall re-open the program if the Director subsequently determines that there are sufficient funds not only for existing subscribers but for additional eligible applicants. Subsection (b)(1) addresses the situation in which the Director determines there are sufficient funds only for *some, but not all*, new eligible applicants; in that situation, the program shall open to the number of eligible applicants for whom there are sufficient funds. Subsection (b)(2) addresses the situation in which the Director determines that there are sufficient funds to meet the estimated costs of program expenditures; in this case, the program shall open to new applications without restriction.

Section 2699.202(c): This new subsection provides that, if the MRMIB Board has made a finding pursuant to subsection (a) that sufficient funds are not available, all applications shall be denied *unless* the program is open to some or all new applications because the Executive Director has (subsequently) determined that sufficient funds are available for some or all eligible applicants.

Section 2699.202(d): This subsection rennumbers 2699.202(b) to 2699.202(d) and retains the substantive provisions that are currently in subsection 2699.202(b), stating the procedure for initial review of applications when the program is open to new enrollment. The sentence is re-structured to clarify that the program reviews applications if “and to the extent that” the program is open to new enrollment. This clarification is needed to reflect the new provision in subsection (c) giving the Executive Director the authority to determine whether funding is available for all or only for some new eligible applicants. In addition, the sentence is re-structured to substitute the phrase “if...the program is open to new enrollment” for the phrase “if...there is funding available.” This is a clarification, tracking the process outlined in the preceding subsections.

Policy Statement: This amendment to the AIM regulations clarifies the process by which the program, in compliance with state statute, closes to new enrollment if there is insufficient funding. These regulations provide clear standards, a more



specific description of the procedure, and a public process through which the MRMIB Board makes any decision to close the program as a result of insufficient program funding.

#### **TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY or REPORT DETERMINATIONS**

1. ("California State Budget 2009-10," Closing the 60 Billion Dollar Budget Gap, at p. 1; available at <http://www.dof.ca.gov/budget/historical/2009-10/governors/summary/documents/enacted/FullBudgetSummary.pdf>)
2. In November, 2009, a new report by the Legislative Analyst (November 2009) estimated that California officials will face an additional budget gap of nearly \$21 billion over the next year and a half. ("The 2010-11 Budget: California's Fiscal Outlook"; available at [http://www.lao.ca.gov/2009/bud/fiscal\\_outlook/fiscal\\_outlook\\_111809.pdf](http://www.lao.ca.gov/2009/bud/fiscal_outlook/fiscal_outlook_111809.pdf))

If you are unable to access the above referenced websites, please contract Dianne Knox at (916) 324-0592 or [dknox@mrmib.ca.gov](mailto:dknox@mrmib.ca.gov) to obtain a printed copy.

The Proposed Substantial differentiation from existing comparable Federal Regulation or Statute: N/A

Mandates on Local Agencies or School Districts: N/A

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: N/A

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: N/A

Non-discretionary Costs or Savings Imposed on Local Agencies: N/A

Costs or Savings to Any State Agency: None.

Costs or Savings in Federal Funding to the State: None.